

**SUNSHINE ORDINANCE
TASK FORCE**



City Hall
1 Dr Carlton B. Goodlett Place, Room 244
San Francisco, CA 94102-4689
Tel. No. (415) 554-7724
Fax No. (415) 554-7854
TTD/TTY No. (415) 554-5227

ORDER OF DETERMINATION

February 21, 2023

DATE DECISION ISSUED

January 5, 2022

CASE TITLE: Jarmee Thieu v. Ken Pang and the Human Services Agency
Investigation Division
File No: 21152

Complaint filed by Jarmee Thieu against Ken Pang and the Human Services Agency Investigation Division for allegedly violating Administrative Code (Sunshine Ordinance), Section(s) 67.21, by failing to respond to public records request in a timely and/or complete manner.

HEARING AND ACTION ON THE COMPLAINT

On December 14, 2021, the Education Outreach and Training Committee acting in its capacity to hear petitions/complaints heard the matter.

Moved by Chair Hyland, seconded by Member Yankee, to find that the SOTF has jurisdiction, find that the requested records are public and referred the matter to the SOTF for hearing with the recommendation that the SOTF find violations for Administrative Code, (Sunshine Ordinance) Sections 67.25 for failing to provide the requested records in a complete and timely manner; 67.26 for failing to keep withholding to a minimum; California Public Records Act 6253(b) for failing to provide an identifiable records and by failing to make the records promptly available to any person upon payment of fees covering direct costs of duplication, 6253(c) by failing to respond to the request within 10 days and by failing to determine whether the request, in whole or in part, seeks copies of disclosable public records in the possession of the agency and shall promptly notify the person making the request of the determination and the reasons therefor.

The motion PASSED by the following vote:

Ayes: 3 - Hyland, Yankee, Padmanabhan,
Noes: 0 - None

On January 5, 2022, the SOTF held a hearing to review the recommendation from committee and/or to review the merits of the petition/complaint.

FINDINGS AND ORDER OF DETERMINATION

On January 5, 2022, the SOTF made the following Findings and issued an Order of Determination based upon the testimony and evidence presented:

The SOTF determined that:

Moved by Member Hyland, second by Member Schmidt, to amend their original motion to find that Ken Pang and the Human Services Agency violated Administrative Code, (Sunshine Ordinance) Section 67.26 for nonminimal withholding and for failing to provide any documents, including screen shots and emails pertaining to the timeline between July 1, 2021, and October 13, 2021, in a complete and timely manner regarding HSA's position numbers 00313347 and 01072508 and that such documents be provided to the Petitioner with appropriate redactions by January 21, 2022, and include an index or timeline of records provided with regard to opening positions, posting the interview period and announcing the positions that have been filled by January 21, 2022.

and

Moved by Member Hyland, second by Member Schmidt, to find that Ken Pang and the Human Services Agency violated California Government Code 6253(b) for failing to make records available promptly and Administrative Code (Sunshine Ordinance) Sections 67.21(c) by failing to provide assistance to the requestor, 67.26 for nonminimal withholding and ordered that Ken Pang and the Human Services Agency produce a timeline to include all communications from July 1, 2021 to October 13, 2021, emails, screen shots, documents with appropriate redactions pertaining to positions 00313347 and 01072508 in a complete and/or timely manner regarding information on when the job was opened, closed and all communications by HSA employees be provided to the Petitioner by January 21, 2022.

The motions PASSED by the following vote:

Ayes: 9 - Hyland, Schmidt, Yankee, Stein, Padmanabhan, Neighbors, LaHood,

B. Wolfe, Wong

Noes: 0 - None

The Order of Determinations was approved
by the Sunshine Ordinance Task Force
on: February 1, 2023

cc. Jarmee Thieu, (Petitioner/Complainant)
Ken Pang and the Human Services Agency Investigation Division (Respondent)

Monitoring Meetings by the Committee

It is the intent that the Compliance and Amendments Committee monitoring Order of Determination from the SOTF to insure compliance on the issues referred and listed and not to rehear the complaints or discuss other issues.

Upon determining compliance the matter will be close and not subject to further hearings.

If the CAC determines that compliance has not been achieved the committee and cannot be achieved the CAC should avoid referring the matter back to the SOTF if possible and take one of the following action (I assume they will be authorized to act on behalf of the full SOTF) or referred the matter back to the SOTF with recommendation to take one of the following actions (under a consent agenda?):

- Referral to the Ethics Commission for enforcement action.
- Referral to the District Attorney and/or the Attorney General who may take whatever measures they deem necessary to insure compliance with the provisions of the Sunshine Ordinance.
- Referral to the Board of Supervisors and/or the Mayor for enforcement action.
- Statement that the SOTF has made their determination but are unable to enforce their ruling. Apologize that the SOTF cannot take any other action to enforce but Reference 67.35 (Enforcement Provision) regarding the ability to file a lawsuit with the Superior Court.

Possible References for action:

67.21(e) If the custodian refuses, fails to comply, or incompletely complies with a request described in (b) above or if a petition is denied or not acted on by the supervisor of public records, the person making the request may petition the Sunshine Task Force for a determination whether the record requested is public. The Sunshine Task Force shall inform the petitioner, as soon as possible and within 2 days after its next meeting but in no case later than 45 days from when a petition in writing is received, of its determination whether the record requested, or any part of the record requested, is public. Where requested by the petition, and where otherwise desirable, this determination shall be in writing. Upon the determination that the record is public, the Sunshine Task Force shall immediately order the custodian of the public record to comply with the person's request. **If the custodian refuses or fails to comply with any such order within 5 days, the Sunshine Task Force shall notify the district attorney or the attorney general who may take whatever measures she or he deems necessary to insure compliance with the provisions of this ordinance.** The Board of Supervisors and the City Attorney's office shall provide sufficient staff and resources to allow the Sunshine Task Force to fulfill its duties under this provision. Where requested by the petition, the Sunshine Task Force may conduct a public hearing concerning the records request denial. An authorized representative of the custodian of the public records

requested shall attend any hearing and explain the basis for its decision to withhold the records requested.

(f) The administrative remedy provided under this article shall in no way limit the availability of other administrative remedies provided to any person with respect to any officer or employee of any agency, executive office, department or board; nor shall the administrative remedy provided by this section in any way limit the availability of judicial remedies otherwise available to any person requesting a public record. If a custodian of a public record refuses or fails to comply with the request of any person for inspection or copy of a public record or with an administrative order under this section, the superior court shall have jurisdiction to order compliance.

67.30(c) The Task Force shall make referrals to a municipal office with enforcement power under this ordinance or under the California Public Records Act and the Brown Act whenever it concludes that any person has violated any provisions of this ordinance or the Acts.

67.31 The Task Force shall make referrals to a municipal office with enforcement power under this ordinance or under the California Public Records Act and the Brown Act whenever it concludes that any person has violated any provisions of this ordinance or the Acts.

67.35 ENFORCEMENT PROVISIONS

(a) Any person may institute proceedings for injunctive relief, declaratory relief, or writ of mandate in any court of competent jurisdiction to enforce his or her right to inspect or to receive a copy of any public record or class of public records under this Ordinance or to enforce his or her right to attend any meeting required under this Ordinance to be open, or to compel such meeting to be open.

(b) A court shall award costs and reasonable attorneys' fees to the plaintiff who is the prevailing party in an action brought to enforce this Ordinance.

(c) If a court finds that an action filed pursuant to this section is frivolous, the City and County may assert its rights to be paid its reasonable attorneys' fees and costs.

(d) Any person may institute proceedings for enforcement and penalties under this act in any court of competent jurisdiction or before the Ethics Commission if enforcement action is not taken by a City or State official 40 days after a complaint is filed.

CREATE TEMPLATES for instances when OD has not occurred and cannot be enforced by committee.